

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD L. TURNER,
Plaintiff,

No. C 05-2297 MHP

v.

WARREN E. RUPF, et al.,
Defendants.

MEMORANDUM & ORDER

**Re: Defendants' Motion for Summary
Judgment**

Plaintiff Edward Turner commenced this action under 42 U.S.C. section 1983, alleging deliberate indifference to his serious medical needs during his incarceration at the Martinez Detention Facility ("MDF"). Defendants' first motion for summary judgment was denied in February 2008. Now before the court is defendants' second motion for summary judgment. Defendants assert they are entitled to summary judgment because (1) on the undisputed facts, no violation of plaintiff's constitutional rights has occurred, (2) there is no evidence of any actionable denial of medical care to plaintiff while incarcerated, and (3) qualified immunity shields the defendants from liability. Having considered the parties' arguments and submissions, the court enters the following memorandum and order.

BACKGROUND

Plaintiff has alleged the following cognizable claims: (1) Defendant Dyer¹ failed to inform custodial staff of Turner's medical condition (that Turner suffered from pain resulting from a car

accident), and defendant Hernandez subsequently placed Turner in an upper bunk despite being informed that Turner's condition made climbing into the bunk very painful; (2) defendant Poole refused to provide Turner with pain medications on July 16, 2001; (3) defendants Longstreth, Poole and Diente refused to schedule a doctor's appointment for Turner and/or denied him pain medications on December 1, 2001; (4) defendants Wilson and Guy refused to examine Turner when he complained of back and neck pain on October 30, 2001; (5) defendants Titus, Wilson, O'Mary, Guy, Seeberger, Longstreth, Huie, Pizzo and Rael failed to address Turner's ongoing pain in his injured hand; (6) defendants Titus, Guy, Rayrao, Poole, Wilson and Lumpkin failed to provide Turner with prescribed pain medications relating to recurrent nose bleeds and nose surgery between June 11, 2002, and December 13, 2002; (7) defendant Canady failed to inform Turner's doctor that the metal plates inside Turner's prescribed knee brace had to be removed; (8) medical staff failed to inform custodial staff that Turner's medical condition required that he be housed on the first floor, and defendants Oliver and Gray subsequently ordered Turner to move to the second floor despite knowledge of his medical brace and medical need to remain on the first floor; (9) defendant Gray and/or defendant Tanya failed to respond to Turner's complaint of pain on February 14, 2003; and (10) defendant Oliver tripped over Turner's outstretched leg, causing Turner significant pain.

Docket No. 12 (Order of Service and Partial Dismissal) at 4-6.

Plaintiff filed a motion for partial summary judgment in February 2007, seeking judgment as a matter of law against Oliver. Docket No. 48. This court denied the motion, finding that a genuine issue of fact existed as to whether Oliver had acted with deliberate indifference. Docket No. 78 (Order Denying Pl.'s MSJ) at 3-4. Defendants then filed a motion for summary judgment on the grounds that (1) plaintiff's Eighth Amendment civil rights had not been violated, (2) defendants were entitled to qualified immunity, (3) any violation of plaintiff's Constitutional civil rights amounted to no more than negligence and (4) plaintiff had failed to exhaust administrative remedies. Docket No. 79. This motion was denied in February 2008 because defendants provided neither evidence proving non-exhaustion nor evidence contradicting plaintiff's verified complaint and opposition declaration. Docket No. 84 (Order Denying Def.'s MSJ). As to qualified immunity, the court found

1 that no reasonable officer would have failed to understand that the treatment alleged by plaintiff
2 would amount to a violation of a clearly established right.

3 Defendants assert on their instant motion that the undisputed facts demonstrate no deliberate
4 indifference on the part of defendants and thus no constitutional violation. Defendants also reassert
5 the qualified immunity defense.

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7 LEGAL STANDARD

8 Summary judgment may be granted only when, drawing all inferences and resolving all
9 doubts in favor of the non-moving party, there are no genuine issues of material fact and the moving
10 party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *see generally Anderson v.*
11 *Liberty Lobby, Inc.*, 477 U.S. 242, 247-255 (1986). A fact is “material” if it may affect the outcome
12 of the proceedings, and an issue of material fact is “genuine” if the evidence is such that a reasonable
13 jury could return a verdict for the non-moving party. *Id.* at 248. The court may not make credibility
14 determinations. *Id.* at 255. The moving party bears the burden of identifying those portions of the
15 pleadings, discovery and affidavits that demonstrate the absence of a genuine issue of material fact.
16 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party meets its initial burden,
17 the non-moving party must go beyond the pleadings and, by its own affidavits or discovery, set forth
18 specific facts showing that there is a genuine issue for trial. Fed R. Civ. P. 56(e); *see Anderson*, 477
19 U.S. at 250.

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21 DISCUSSION

22 I. Successive Motions for Summary Judgment

23 Plaintiff asserts that law of the case doctrine precludes duplicative motions which seek
24 reexamination of prior rulings in the same litigation. The Ninth Circuit has rejected the position that
25 successive motions for summary judgment are categorically impermissible. *See Knox v. S.W.*
26 *Airlines*, 124 F.3d 1103, 1105-06 (9th Cir. 1997). Indeed, the Ninth Circuit recently wrote: “[W]e
27 now hold explicitly that district courts have discretion to entertain successive motions for summary
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1 judgment, independent of whether the motions involve qualified immunity.” *Hoffman v.*
2 *Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010). “[A] successive motion for summary judgment is
3 particularly appropriate on an expanded factual record.” *Id.* (citations omitted). Defendants’ initial
4 motion for summary judgment was exceptionally “slopp[y]” and presented with no supporting
5 evidence. *See* Docket No. 79 (Mot.); Docket No. 84 (Order) at 1, 5. Defendants are now represented
6 by the Contra Costa County Counsel’s office, and the factual record has been expanded with filings
7 by both plaintiff and defendants. Under the circumstances, the court finds it appropriate to consider
8 a second motion for summary judgment.

9 II. Deliberate Indifference to Serious Medical Needs

10 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth
11 Amendment’s proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97,
12 104 (1976). A claim of deliberate indifference to serious medical needs by a pretrial detainee arises
13 under the Fourteenth Amendment rather than the Eighth Amendment, although the Eighth
14 Amendment serves as the benchmark for evaluating the claim. *Carnell v. Grimm*, 74 F.3d 977, 979
15 (9th Cir. 1996). A serious medical need exists if the failure to treat a prisoner’s condition could
16 result in further significant injury or the “unnecessary and wanton infliction of pain.” *McGurkin v.*
17 *Smith*, 974 F.2d 1050, 1059 (citing *Estelle*, 429 U.S. at 104), *overruled on other grounds by, WMX*
18 *Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997). The “existence of chronic and
19 substantial pain” was one of the examples cited by *McGurkin* as an indication that a prisoner has a
20 serious medical need. *Id.* at 1059-60 (citing *Wood v. Housewright*, 900 F.2d 1332, 1337-41 (9th Cir.
21 1990)). A prison official is deliberately indifferent if he “knows of and disregards an excessive risk
22 to inmate health or safety.” *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

23 Defendants assert that the undisputed facts show no constitutional violation. Defendants rely
24 upon records indicating significant medical treatment provided to Turner during his incarceration.
25 That Turner did receive some medical treatment does not prove that some of his serious medical
26 needs were not addressed. Indeed, “[a] prisoner need not prove that he was completely denied
27 medical care. Rather, he can establish deliberate indifference by showing that officials intentionally
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1 interfered with his medical treatment.” *Lopez v. Smith*, 203 F.3d 1122, 1132 (9th Cir. 2000)
2 (citations omitted). Defendants fail to point the court to medical records contradicting plaintiff’s
3 specific claims of deliberate indifference.

4 Regarding the removal of metal knee braces prescribed to plaintiff, defendants have
5 adequately explained why a prison official would require removal of the metal components of the
6 brace. *See* Docket No. 119 (Schuler Dec.) ¶ 6; Docket No. 127 (Pascoe Dec.) ¶ 8. Both
7 declarations, however, acknowledge that metal-hinged braces may be permitted at the insistence of
8 the treating physician. *Id.* Defendants have failed to justify defendant Canady’s alleged failure to
9 inform the prescribing doctor that the metal would be removed. A reasonable person would have
10 provided the doctor with an opportunity to either insist upon the brace or determine an alternative
11 course of treatment. Also, defendants suggest that the metal-hinged knee brace was not prescribed
12 until after plaintiff fell on the stairs on February 13, 2003, but the cited medical records are unclear
13 on this point. *See* Docket No. 117 (Holmes Dec.), Exh. A (Records from Contra Costa Regional
14 Medical Center) at 115-26. Medical records dated January 30, 2003, mention a knee brace, *id.* at
15 115, and plaintiff has declared that the hinged knee brace was prescribed during that meeting.
16 Docket No. 122 (Chung Dec.), Exh. F (Turner Dec.) ¶ 22. A genuine issue of fact thus exists as to
17 whether defendants acted with deliberate indifference regarding the removal of the metal plates from
18 plaintiff’s knee brace and whether plaintiff had been prescribed the hinged brace by the time he fell
19 on February 13, 2003.

20 Regarding plaintiff’s assignment to an upper bunk, plaintiff’s sworn testimony is that he was
21 assigned to a top bunk. Turner Dec. ¶ 9. Defendants argue that bunk assignments within each cell
22 are generally determined by the inmates themselves. Yet defendants’ own declarations state that
23 inmate decisions regarding bunk assignments will not control when “a need for a lower bunk has
24 been identified by medical staff.” Schuler Dec. ¶ 4, Pascoe Dec. ¶ 7. A genuine issue of fact exists
25 as to whether plaintiff was assigned to an upper bunk and whether defendants acted with deliberate
26 indifference regarding such assignment.

1 III. Qualified Immunity

2 Defendants contend that qualified immunity protects them from liability. Qualified immunity
3 shields a public official from individual liability for civil damages under 42 U.S.C. section 1983 so
4 long as his conduct does not “violate clearly established statutory or constitutional rights of which a
5 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). “Qualified
6 immunity balances two important interests—the need to hold public officials accountable when they
7 exercise power irresponsibly and the need to shield officials from harassment, distraction, and
8 liability when they perform their duties reasonably. The protection of qualified immunity applies
9 regardless of whether the government official’s error is a mistake of law, a mistake of fact, or a
10 mistake based on mixed questions of law and fact.” *Pearson v. Callahan*, ___ U.S. ___, ___, 129
11 S.Ct. 808, 815 (2009) (citation and internal quotation marks omitted). Qualified immunity “provides
12 ample protection to all but the plainly incompetent or those who knowingly violate the law.” *Malley*
13 *v. Briggs*, 475 U.S. 335, 341 (1986). As qualified immunity provides immunity from suit and is not
14 merely a defense to liability, it is important to “resolv[e] immunity questions at the earliest possible
15 stage in litigation.” *See Hunter v. Bryant*, 502 U.S. 224, 227 (1991).

16 In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court articulated an inquiry for
17 determining whether qualified immunity is appropriate. For an official to benefit from qualified
18 immunity, two requirements must be met. First, the court must determine whether, taken in the light
19 most favorable to the party asserting the injury, the facts alleged show the officer’s conduct violated
20 a constitutional right. *Id.* at 201. Second, the court must consider whether any constitutional right
21 that was violated was so clearly established that a reasonable officer would understand that what he
22 is doing violates that right. *Id.* at 202. The second inquiry is particularized, as it occurs in the
23 specific context of the situation confronted by the official. *Id.*; *see also Rudebusch v. Hughes*, 313
24 F.3d 506, 514 (9th Cir. 2002). The *Saucier* inquiry articulated the first question as a threshold
25 question; however the Court recently held that lower courts may “exercise their sound discretion in
26 deciding which of the two prongs of the qualified immunity analysis should be addressed first in
27 light of the circumstances in the particular case at hand.” *Pearson*, 129 S.Ct. at 818.

1 As in the first motion for summary judgment, defendants fall short of carrying their burden to
2 show their entitlement to judgment in their favor on this affirmative defense. As previously
3 indicated in the order denying that motion, no reasonable correctional officer or prison official would
4 have thought it lawful to (1) refuse to tell custodial staff of an inmate's medical condition that
5 required him to be in a lower bunk, or, once informed, insist on that inmate's assignment to an upper
6 bunk, (2) refuse to provide an inmate with prescribed pain medications, (3) refuse to make
7 appointments for an inmate to see a doctor, (4) refuse to examine an inmate complaining of neck and
8 back pain, (5) refuse to address an inmate's ongoing pain from an injury, (6) refuse to inform a
9 prescribing physician that a metal-hinged knee brace will not be permitted, (7) require an inmate
10 with an injured knee to be housed on the second floor or (8) deliberately trip over an inmate's injured
11 leg.²

12 Defendants indicate that adequate policies and procedures were in place at MDF during
13 Turner's incarceration. The mere existence of policies and procedures in no way proves that
14 defendants complied with these policies and procedures. Defendants have also submitted a
15 declaration suggesting that Turner received appropriate medical care at MDF. Docket No. 118
16 (O'Mary Dec.) ¶ 3. This declaration fails to address the specific incidents of deliberate indifference
17 cited by Turner and thus misconstrues the provision of *some* appropriate care as the provision of *all*
18 appropriate care.

19 Material disputes of fact exist as to whether defendants violated Turner's clearly established
20 constitutional right, and no reasonable officer would have thought it lawful to ignore plaintiff's
21 serious medical needs in the ways alleged in the complaint. Defendants are not entitled to summary
22 judgment on their qualified immunity defense.

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1 CONCLUSION

2 For the foregoing reasons, defendants' motion for summary judgment is DENIED. Such
3 denial renders plaintiff's motion to strike the declaration of Matthew Schuler moot, and that motion
4 is accordingly DENIED. Defendants' objections to the declaration of Edward L. Turner are
5 OVERRULED as untimely.³

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7 IT IS SO ORDERED.

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9 Dated:

10 *March 5, 2010*

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13 MARILYN HALL PATEL
14 United States District Court Judge
15 Northern District of California
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ENDNOTES

1. Defendant Dyer is sometimes referred to as "Dreyer" in the record. Similarly, defendant Pizzo is sometimes referred to as "Pizzon" in the record, and defendant Rael's name is occasionally misspelled as "Real."
2. A genuine issue of fact exists as to whether defendant Oliver deliberately tripped over plaintiff's outstretched leg.
3. *See* Civil Local Rule 7-3(d). The objections were not filed until the hearing date, weeks after the reply was filed.